UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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SOLEDAD VILLANEUVA,

Plaintiff,

-vs.-

LITTLE BEAR INCORPORATED, LITTLE BEAR FILMS, INC., LITTLE BEAR PRODUCTIONS, INC., NAN BUSH, JEANINE MORICK, HILLERY ESTES, and JONATHAN BERNES,

Defendants.
---X

Case No.

COMPLAINT

Plaintiff, SOLEDAD VILLANEUVA, by and through her attorneys, the LAW OFFICES OF WILLIAM CAFARO, complaining of the Defendants, hereby allege as follows:

THE PARTIES

1. Plaintiff, SOLEDAD VILLANEUVA, (hereinafter “Ms. Villanueva” or “Plaintiff Villanueva”) is an individual residing in Queens, NY.

2. Upon information and belief, Defendant LITTLE BEAR INCORPORATED, (hereinafter “Little Bear Inc.”) was and is a domestic business corporation whose principal place of business is located at 205 Hudson Street, Suite 1000, New York, NY 10013.

3. Upon information and belief, Defendant LITTLE BEAR FILMS, INC., (hereinafter “Little Bear Films”) was and is a domestic business corporation whose principal place of business is located at 135 Watts Street, #5, New York, NY 10013.

4. Upon information and belief, Defendant LITTLE BEAR PRODUCTIONS, INC., (hereinafter “Little Bear Productions”) was and is a domestic business corporation whose principal place of business is located at 135 Watts Street, #5, New York, NY 10013.

5. Upon information and belief, Defendant NAN BUSH, (hereinafter “Bush”) is an individual, whose actual place of business is located at 135 Watts Street, #6, New York, NY 10013.

6. Upon information and belief, at all times herein pertinent, Defendant Bush, served as a principal, officer and/or manager of Defendants Little Bear Inc., Little Bear Films and Little Bear Productions.

7. Prior to the filing of this Complaint, Defendant Bush was served with Notice pursuant to N.Y Bus. Corp. Law § 630.

8. Upon information and belief, Defendant JEANINE MORICK, (hereinafter “Morick”) is an individual, whose actual place of business is located at 135 Watts Street, #5, New York, NY 10013.

9. Upon information and belief, at all times herein pertinent, Defendant Morick, served as a principal, officer and/or manager of Defendants Little Bear Inc., Little Bear Films and Little Bear Productions.

10. Prior to the filing of this Complaint, Defendant Morick was served with Notice pursuant to N.Y Bus. Corp. Law § 630.

11. Upon information and belief, Defendant HILLERY ESTES, (hereinafter "Estes") is an individual, whose actual place of business is located at 135 Watts Street, #5, New York, NY 10013.

12. Upon information and belief, at all times herein pertinent, Defendant Estes, served as a principal, officer and/or manager of Defendants Little Bear Inc., Little Bear Films and Little Bear Productions.

13. Upon information and belief, Defendant JONATHAN BERNES, (hereinafter "Bernes") is an individual, whose actual place of business is located at 135 Watts Street, #5, New York, NY 10013.

14. Upon information and belief, at all times herein pertinent, Defendant Bernes, served as a principal, officer and/or manager of Defendants Little Bear Inc., Little Bear Films and Little Bear Productions.

15. Upon information and belief, for the calendar year 2014 the gross receipts of Little Bear Inc., were not less than $500,000.00.

16. Upon information and belief, for the calendar year 2015 the gross receipts of Little Bear Inc., were not less than $500,000.00.

17. Upon information and belief, for the calendar year 2016 the gross receipts of Little Bear Inc., were not less than $500,000.00.

18. Upon information and belief, for the calendar year 2017 the gross receipts of Little Bear Inc., will not be less than $500,000.00.

19. Upon information and belief, for the calendar year 2014 the gross receipts of Little Bear Films, were not less than $500,000.00.

20. Upon information and belief, for the calendar year 2015 the gross receipts of Little Bear Films, were not less than $500,000.00.

21. Upon information and belief, for the calendar year 2016 the gross receipts of Little Bear Films, were not less than $500,000.00.

22. Upon information and belief, for the calendar year 2017 the gross receipts of Little Bear Films, will not be less than $500,000.00.

23. Upon information and belief, for the calendar year 2014 the gross receipts of Little Bear Productions, were not less than $500,000.00.

24. Upon information and belief, for the calendar year 2015 the gross receipts of Little Bear Films, were not less than $500,000.00.

25. Upon information and belief, for the calendar year 2016 the gross receipts of Little Bear Films, were not less than $500,000.00.

26. Upon information and belief, for the calendar year 2017 the gross receipts of Little Bear Films, will not be less than $500,000.00.

27. Upon information and belief, the three corporate Defendants Little Bear Inc., Little Bear Films and Little Bear Productions, are operated under common ownership and under common management for a joint business purpose, as a joint enterprise.

28. Upon information and belief, Little Bear Inc., Little Bear Films and Little Bear Productions, have unified and interrelated operations, centralized control of labor relations, and interrelated business goals.

29. Upon information and belief, the defendant Bush owns all the beneficial interest of the defendants, Little Bear Inc. and Little Bear Films.

30. Upon information and belief, the defendant Morick owns all the beneficial interest of the defendants Little Bear Productions.

31. Upon information and belief, the defendants Bush, Morick, Estes and Bernes conducted substantially all the management functions of the defendants, Little Bear Inc., Little Bear Films and Little Bear Productions.

32. Upon information and belief, the aggregated gross receipts of Little Bear Inc., Little Bear Films, and Little Bear Productions exceeded $500,000.00 per annum in each of the calendar years 2014 through 2017, inclusive.

JURISDICTION AND VENUE

33. Jurisdiction is based upon 28 U.S.C. § 1331, insofar as it involves a statute of the United States, specifically, the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*, and Plaintiff relies upon 28 U.S.C. § 1367 to invoke supplemental jurisdiction with respect to the state law claims which form another basis for recovery upon the same factual nexus, specifically Articles 6 & 19 of the Labor Law and related New York State Department of Labor regulations.

34. Venue is based upon 28 U.S.C. § 1391(b)(1), insofar as at least one of the Defendants resides within this Judicial District, and (b)(2), insofar as a substantial part of the events giving rise to the within causes of action occurred in this Judicial District.

FACTUAL ALLEGATIONS

35. At all times herein pertinent, the Defendants, and each of them, were engaged in an industry having an affect on commerce within the meaning of 29 U.S.C. § 203.

36. At all times herein pertinent, and in the course of her duties, Plaintiff regularly handled products which had been moved in commerce including, but not limited to, various food items and cleaning supplies.

37. Plaintiff's primary duties did not include the exercise of discretion and independent judgment with respect to any matters of significance.

38. Little Bear Inc. operates as a commercial photography business.

39. Little Bear Films operates as a commercial film business.

40. Little Bear Productions operates as a commercial production business

41. Ms. Villanueva was employed by the Defendants from the calendar year of 2006 until on or about April 3, 2017.

42. Ms. Villanueva was assigned various duties including, but not limited to, laundry, ironing, cooking, vacuuming, mopping, sweeping, taking out garbage, cleaning bathrooms, cleaning office desks and making coffee.

43. Ms. Villanueva generally worked, Mondays through Sundays, inclusive, from 5:00AM until 7:30PM.

44. Ms. Villanueva was paid an hourly rate of $14.00 per work hour until on or about June 1, 2013 where she was afforded a raise to $18.00 per work hour and remained with the Defendants until termination.

45. Plaintiff regularly worked for the Defendants in excess of forty (40) hours a week but did not receive any overtime premium of one and one half times her regular rate of pay for those hours.

46. Upon information and belief, Defendants Bush, Morick, Estes and Bernes had the power to hire employees at Little Bear Inc., Little Bear Films and Little Bear Productions.

47. Upon information and belief, Defendants Bush, Morick, Estes and Bernes had the power to fire employees at Little Bear Inc., Little Bear Films and Little Bear Productions.

48. Upon information and belief, Defendants Morick, Estes and Bernes fired Ms. Villanueva on or about April 3, 2017.

49. Defendants Bush, Morick, Estes and Bernes controlled the terms of the Plaintiff's employment in they would tell her what tasks to complete and on what time frame they needed to be completed.

50. Upon information and belief, Defendants Bush, Morick, Estes and Bernes controlled the work schedule of all of the employees of Little Bear Inc., Little Bear Films and Little Bear Productions, including the Plaintiff's work schedules.

51. Upon information and belief, Defendants Bush, Morick, Estes and Bernes controlled the rates and methods of payment of each of the employees of Little Bear Inc., Little Bear Films and Little Bear Productions, including the Plaintiff's pay rates and methods of pay.

52. At all times herein pertinent, the Plaintiff performed her duties for the Defendant Little Bear Inc., Little Bear Films and Little Bear Productions, at the direction and under the control of Defendants Bush, Morick, Estes and Bernes.

53. Upon information and belief, and at all times herein pertinent, Defendants Bush, Morick, Estes and Bernes, exercised close control over the managerial operations of Little Bear Inc., Little Bear Films and Little Bear Productions, including the policies and practices concerning employees.

54. At all times herein pertinent, Defendants Bush, Morick, Estes and Bernes controlled the terms and conditions of employment, supervised employees, made decisions as to hiring and firing and as to wages with respect to the employees of Little Bear Inc., Little Bear Films and Little Bear Productions in general, and with respect to the Plaintiff in particular.

55. At all times herein pertinent, Defendants Bush, Morick, Estes and Bernes acted as Plaintiff's employers within the meaning of the FLSA and the New York State Labor Law.

56. The Defendants did not create or maintain records showing the precise number of hours Plaintiff worked or of wages she earned.

57. Plaintiff alternatively allege that Defendants created records showing the number of hours Plaintiff worked and/or of wages she earned but upon information and belief, have not maintained them as required by law.

58. Defendants failed to furnish the Plaintiff with proper annual wage notices, as required by the NYLL.

59. Defendants failed to furnish the Plaintiff with a proper statement with every payment of wages, as required by the NYLL.

AS AND FOR A FIRST CAUSE OF ACTION
FEDERAL FAIR LABOR STANDARDS ACT
AGAINST THE DEFENDANTS, AND EACH OF THEM
(FAILURE TO PAY OVERTIME)

60. Plaintiff hereby incorporates all the preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

61. Defendants were required to directly pay the Plaintiff an overtime premium of one and one half times the Plaintiff's regular rate of pay for all hours worked over forty (40) in a given workweek.

62. Defendants failed to pay the Plaintiff the overtime wages to which the Plaintiff was entitled under the FLSA.

63. All of the foregoing constituted willful and repeated violations of the Fair Labor Standards Act, so the applicable statute of limitations is three years pursuant to 29 U.S.C. § 255(a).

AS AND FOR A SECOND CAUSE OF ACTION
STATE WAGE AND HOUR LAW
AGAINST THE DEFENDANTS, AND EACH OF THEM
(FAILURE TO PAY OVERTIME)

64. Plaintiff hereby incorporates all preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

65. Defendants have failed to pay Plaintiff the overtime premium of one and one half times the Plaintiff's regular rate of pay for all hours worked above forty in a given work week, to which the Plaintiff is entitled under the NYLL and the supporting New York State Department of Labor Regulations.

66. Defendants herein knowingly and in bad faith violated Articles 6 & 19 of the New York State Labor Law and supporting New York State Department of Labor regulations by failing to pay the Plaintiff overtime pay at the premium rate of one and one half times Plaintiff's regular rate of pay.

AS AND FOR A THIRD CAUSE OF ACTION
STATE WAGE AND HOUR LAW
AGAINST THE DEFENDANTS, AND EACH OF THEM
(FAILURE TO PAY SPREAD OF HOURS)

67. The Plaintiff hereby incorporates all preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

68. The Defendants herein knowingly, willfully and in bad faith violated Articles 6 & 19 of NYLL, and more particularly 12 NYCRR § 142-2.4, by failing to pay the Plaintiff, one additional hour of pay at the prevailing minimum wage for each day during which there was a split shift and/or the spread of hours exceeded 10 hours.

AS AND FOR A FOURTH CAUSE OF ACTION
NEW YORK STATE LABOR LAW
AGAINST THE DEFENDANTS, AND EACH OF THEM
(FAILURE TO PROVIDE ANNUAL WAGE NOTICES)

69. Plaintiff hereby incorporate all preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

70. Defendants have willfully failed to furnish the Plaintiff with annual wage notices as required by NYLL, Article 6, § 195(1), in English or in the language identified by each employee as their primary language, at the time of hiring, and on or before February first of each subsequent year of the employee's employment with the employer, a notice containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the

minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

71. Through their knowing or intentional failure to provide the Plaintiff with the annual wage notices required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 et seq., and the supporting New York State Department of Labor Regulations.

AS AND FOR A FIFTH CAUSE OF ACTION
NEW YORK STATE LABOR LAW
AGAINST THE DEFENDANTS, AND EACH OF THEM
(FAILURE TO PROVIDE WAGE STATEMENTS)

72. Plaintiff hereby incorporates all preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

73. Defendants have willfully failed to furnish the Plaintiff with statements with every payment of wages as required by NYLL, Article 6, § 195(3), listing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; and the number of regular and overtime hours worked.

74. Through their knowing or intentional failure to provide the Plaintiff with the wage statements required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 et seq., and the supporting New York State Department of Labor Regulations.

WHEREFORE, Plaintiff prays for judgment as against the Defendants, and each of them, as follows:

a) awarding back pay for overtime pay due and owing to the Plaintiff;

b) awarding back pay for spread of hours pay due and owing to the Plaintiff;

c) Declaring that Defendants violated the provisions of the NYLL relating to notice and record keeping requirements regarding employees, and awarding Plaintiff statutory damages and any other relief authorized under the NYLL for violations of those requirements;

d) awarding liquidated damages pursuant to 29 U.S.C. § 216(b) and/or New York State's Labor Law, Articles 6 & 19, §§ 198(1-a), 663(1);

e) awarding the costs and disbursements of this action, along with reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) and/or New York State's Labor Law, Articles 6 & 19, §§ 198(1-a), 663(1);

f) awarding any other relief this Court deems just, proper and equitable.

Dated: New York, New York
April 13, 2017

Respectfully submitted,
LAW OFFICES OF WILLIAM CAFARO

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New York, NY 10013

LITTLE BEAR FILMS, INC.
135 Watts Street, #5
New York, NY 10013

LITTLE BEAR PRODUCTIONS, INC.
135 Watts Street, #5
New York, NY 10013

NAN BUSH
135 Watts Street, #6
New York, NY 10013

JEANINE MORICK
135 Watts Street, #5
New York, NY 10013

HILLERY ESTES
135 Watts Street, #5
New York, NY 10013

JONATHAN BERNES
135 Watts Street, #5
New York, NY 10013

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SOUTHERN DISTRICT OF NEW YORK
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SOLEDAD VILLANEUVA, Case No.

Plaintiff,

-vs.-

LITTLE BEAR INCORPORATED,
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PRODUCTIONS, INC., NAN BUSH,
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Defendants.
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COMPLAINT

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